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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/796,361	03/09/2004	Patrick L. Dean SR.	124903.0001.000	2262

7590 07/13/2005

Mark A. Tidwell  
Jackson Walker L.L.P.  
Suite 2100  
112 E. Pecan Street  
San Antonio, TX 78205-1521

EXAMINER

GORDON, STEPHEN T

ART UNIT	PAPER NUMBER
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3612

DATE MAILED: 07/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/796,361	Applicant(s) DEAN ET AL.	
	Examiner Stephen Gordon	Art Unit 3612	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 27 April 2005.  
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-55 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☒ Claim(s) 3-11 and 55 is/are allowed.  
6) ☒ Claim(s) 1,2,12-32 and 35-54 is/are rejected.  
7) ☒ Claim(s) 33 and 34 is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☒ The drawing(s) filed on 30 August 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

1. Claims 2, 12-25, 29, 31, 36-37, and 43-54 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 2, the second to last line is somewhat confusing, and "said first tubes" should apparently be —said first tube—to clarify the claim in this regard.

Claim 12, "the end" in line 3 lacks clear antecedent basis.

Claim 15, "said... adjustment elements" in the last line lacks clear antecedent basis.

Note similar terms appear in each of claims 17 and 18.

Claims 21, 22, 24, and 25 are confusing as the recited adjustment elements are apparently inconsistent with the parallel legs as disclosed.

Claim 23, lines 2 and 3 are somewhat confusing, and "a parallel leg to said second tube of" could be replaced with —each said parallel leg to said respective second tube of each—to correct the claim in this regard.

Claims 29 and 31, the claims are confusing as the recited adjustment elements are apparently inconsistent with the ratchet mechanism of the base claim.

Claims 36 and 37, "said adjustment elements" in each claim lacks clear antecedent basis (i.e. 2 places total).

Claim 45, line 3 is somewhat confusing, and —that—should apparently be inserted after "such" of the line to clarify the claim as best understood.

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

4. Claims 1, 26-32, 35, 39, and 40-42, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Moses in view of Bishop.

Moses teaches a restraining brace (figure 3) which could be used to restrain cargo including a fork shaped portion with two parallel legs 70 and a cross member 64. The device includes a locking portion 50,52+ extending from the cross member in a direction substantially opposite the parallel legs.

Claim 1, the locking portion defines telescoping locking leg tubes 50,52 which include an adjustment mechanism 54,56+ comprised of adjustment apertures and an engaging pin/bolt. The reference fails to specifically teach that the adjustment mechanism defines a ratchet mechanism for incremental movement as newly claimed.

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Bishop teaches an adjustment assembly for a telescopic leg including a rack with teeth adjustment elements and an associated adjustment handle mechanism 19 including an engaging ratchet capable of incremental movement of the telescopic leg.

In order to provide for finer and/or quicker adjustment of the telescopic leg, it would have been obvious to one of ordinary skill in the art to replace the aperture/bolt adjustment mechanism of the telescopic leg of Moses with an incrementally adjustable rack/ratchet assembly in view of the teachings of Bishop.

Claim 26, the tubes 50,52 are nested.

Claims 27 and 35, the modified Moses device is configured as broadly claimed.

Claims 28-31, the teeth of the rack of Moses as modified by Bishop define the adjusting elements as broadly claimed and as best understood (note at least claims 29 and 31 are seriously flawed with regards to clarity as discussed in the section 112 rejection above).

Claim 32, see foot 60 of Moses.

Claim 39, elements 78 of Moses define attachment anchors as broadly claimed.

Claims 40-42, element 42+ of Moses defines a securing element/bar as broadly claimed. Additionally, element 42 defines a strap as broadly claimed and would be flexible at least to some degree.

5. Claims 1 and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moses in view of Oliviero.

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Moses teaches a restraining brace (figure 3) which could be used to restrain cargo including a fork shaped portion with two parallel legs 70 and a cross member 64. The device includes a locking portion 50,52+ extending from the cross member in a direction substantially opposite the parallel legs. The locking portion defines telescoping locking leg tubes 50,52 which include an adjustment mechanism 54,56+ comprised of adjustment apertures and an engaging pin/bolt. The reference fails to specifically teach that the adjustment mechanism defines a ratchet mechanism for incremental movement as newly claimed. Moses further fails to teach a biasing mechanism urging a leg outward.

Oliviero teaches an adjusting assembly for a telescopic leg including a rack with teeth adjustment elements and an associated ratchet/handle pawl assembly which include a biasing member (spring 58) for urging a leg outward as broadly claimed.

In order to provide for finer and/or quicker adjustment, it would have been obvious to one of ordinary skill in the art to replace the aperture/bolt adjustment assembly of Moses with a ratchet adjustment assembly including a spring biasing member which urges the locking leg out in view of the teachings of Oliviero.

6. Claims 33 and 34 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

7. Claims 2, 12-25, 36-37, and 43-54 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

8. Claims 3-11 and 55 are allowed.

9. Applicant's arguments with respect to the currently rejected claims have been considered but are moot in view of the new ground(s) of rejection.

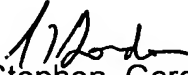
10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen Gordon whose telephone number is (571) 272-6661. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

 7-10-05  
Stephen Gordon  
Primary Examiner  
Art Unit 3612

stg